Due service of the within Petition is hereby acknowledged this.....day of March, A. D. 1933.

_____

_____

Attorneys for Respondent.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 663

THE STATE OF WASHINGTON ON THE RELATION OF BOND & GOODWIN & TUCKER, INCORPORATED, A DISSOLVED DELAWARE CORPORATION, APPELLANT,

vs.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY AND HONORABLE JOSEPH B. LINDSLEY, JUDGE THEREOF

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED FEBRUARY 8, 1933

(37,360)

(37,360)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1933

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IN SUPREME COURT OF WASHINGTON

No. 24002

STATE OF WASHINGTON on the Relation of BOND & GOODWIN & Tucker, Incorporated, a Dissolved Delaware Corporation, Realtor,

v.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY and Honorable Joseph B. Lindsley, Judge Thereof, Respondent

STATE OF WASHINGTON,
County of King, ss:

AFFIDAVIT AND APPLICATION FOR WRIT OF PROHIBITION—Filed May 19, 1932

Frank E. Holman, being first duly sworn, on oath deposes and says:

I

That he is one of the attorneys for the Relator, Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, and, without waiving the special appearance heretofore made in behalf of said Relator in Cause No. 90,636 in the Superior Court of the State of Washington for Spokane County, entitled: W. A. Monroe, Plaintiff, v. Vancouver Kraft Company, Ltd., a corporation, Bond & Goodwin & Tucker, Inc., a corporation, et al., Defendants, makes this affidavit in behalf of said Relator in support of its application for a writ of prohibition herein.

II

That prior to the 18th day of April, 1932 W. A. Monroe commenced an action in the Superior Court for Spokane County, being Cause No. 90,636 aforesaid; that on the 18th day of April, 1932 plaintiff caused one copy of his summons and complaint in said action to be left in the office of the

Secretary of State of the State of Washington, a certified [fol. 2] copy of which summons is hereto attached marked Exhibit A and made a part hereof; that the return and proof of service herein as against said defendant Bond & Goodwin & Tucker, Incorporated, a certified copy of which return is hereto attached, marked Exhibit B and made a part hereof, discloses that the only service of said summons and complaint upon the said Bond & Goodwin & Tucker, Incorporated was attempted by leaving a copy thereof in the office of the said Secretary of State of the State of Washington, as aforesaid, with one A. M. Kitto, Assistant Secretary of State; that neither the Secretary of State nor said Assistant Secretary of State forwarded to said defendant Bond & Goodwin & Tucker, Incorporated or any of its officers or agents, said summons and complaint, so left as aforesaid, or any copy thereof, or any notice regarding the same, and the said Secretary of State of the State of Washington claims to be under no legal duty to forward to said Bond & Goodwin & Tucker, Incorporated or any of its officers or agents said summons and complaint and under no legal duty to furnish said Bond & Goodwin & Tucker, Incorporated with a copy thereof or any notice regarding the same.

III

That except for the purported service upon the office of the Secretary of State, as aforesaid, the record herein discloses that no service of summons or complaint has been made or attempted upon Bond & Goodwin & Tucker, Incorporated, and that said Bond & Goodwin & Tucker, Incorporated has in fact received no copy of any summons or complaint in said action or any notice or knowledge of the character of the action, except through hearsay and report.

IV

That the record discloses that Bond & Goodwin & Tucker, Incorporated withdrew from transacting business in the State of Washington and ceased to transact any business in the State of Washington after November 29, 1929; that on [fol. 3] or about the same date said corporation, being a Delaware corporation, was duly dissolved under and pursuant to the provisions of the laws of the State of Delaware

and a certificate of such dissolution was duly issued by the Secretary of State of the State of Delaware on December 11, 1929; that at and prior to the withdrawal of said corporation from the State of Washington one Duncan Shaw of Seattle, Washington was the statutory agent of said corporation upon whom service of process might be had; that the records in the office of the Secretary of State show that said appointment of Duncan Shaw as statutory agent has never been revoked; that said Duncan Shaw moved from the State of Washington in the year 1929.

V

That on the 7th day of May, 1932, the Relator, Bond & Goodwin & Tucker, Incorporated, specially appearing in the cause for that purpose and no other, duly filed its motion to quash service of process, supported by affidavits, a certified copy of which motion and accompanying affidavits is hereto attached, marked Exhibit C and made a part hereof.

VI

That thereafter, on or about the 10th day of May, 1932, plaintiff caused to be filed in said cause two certain affidavits resisting said motion, certified copies of which affidavits are marked Exhibit D, hereto attached and made a part hereof.

VII

That thereafter, on the 14th day of May, 1932 the Relator's said motion to quash came on for hearing before the Honorable Joseph B. Lindsley, Judge of the Superior Court for Spokane County and after argument by respective counsel said court denied said motion, but allowed ten days to [fol. 4] Relator to apply to this Court for an Alternative Writ of Prohibition and/or Certiorari, and thereafter entered an order, a certified copy of which order and Relator's application for stay of proceedings are hereto attached, marked respectively Exhibit E and Exhibit F and made a part hereof.

VIII

That the provisions of §3854 Remington's Compiled Statutes of Washington (1922), under which service of sum-

mons and complaint upon the Relator, Bond & Goodwin & Tucker, Incorporated was attempted by leaving one copy of said summons and complaint in the office of the Secretary of State, as aforesaid, deprive the Relator of its property without due process of law in violation of the provisions of Clause 1 of the Fourteenth Amendment to the Constitution of the United States and are therefore unconstitutional and void, and the said purported service of process is null and void and of no effect and the said Superior Court of Spokane County has acquired no jurisdiction over the person of the Relator by reason thereof, in that the particular provisions of said §3854 regarding service upon a foreign corporation, where such corporation has withdrawn from the State, do not require the Secretary of State or the plaintiff in the action to give said corporation any notice of such service or any copy of the complaint or summons, or in any other way to give such corporation any notice or information as to the nature and character of the action so as to enable such corporation to make a defense thereto.

IX

That said provisions of said §3854 Remington's Compiled Statutes of Washington (1922) deny to the Relator the equal protection of the laws, in violation of Clause 1 of the Fourteenth Amendment to the Constitution of the United [fol. 5] States in that said provisions of said section wrongfully discriminate against a foreign corporation like the Relator in that said provisions are less favorable than the similar provisions regarding service contained in §227 Remington's Compiled Statutes of Washington (1922) as to service on domestic corporations where no officer or agent of such corporation can be found in the State; and said provisions also wrongfully discriminate against a foreign corporation like Relator in that they are less favorable than the similar provisions of §7044 Remington's Compiled Statutes of Washington (1922) regarding service on foreign insurance companies.

X

That §3854 does not itself, by its own terms, authorize service upon the Secretary of State when a foreign corporation has duly appointed a statutory agent and has itself

not revoked the appointment, and service is attempted on the Secretary of State merely because the duly appointed agent has himself left the State.

XI

That if the alleged service was in fact made on Mr. Kitto, the Assistant Secretary of State, as the return of service on file shows, the service is void under the statute, §3854, and also void because in conflict with Clause 1 of the Fourteenth Amendment to the Constitution of the United States, as aforesaid.

XII

That as affiant is informed and believes and therefore alleges, the complaint in this action is very voluminous, consisting of 478 closely printed pages, containing 157 causes of action, and would require a stenographer about three weeks to make a copy of same; that any trial of the cause will be long and expensive, with resultant great and unnecessary loss and damage to the Relator if it is required to [fol. 6] go to trial in the Superior Court for Spokane County and this Honorable Court thereafter determines that the said Superior Court for Spokane County acquired no jurisdiction over this Relator.

XIII

That, by reason of the foregoing considerations, the Superior Court of the State of Washington for Spokane County has no jurisdiction over the Relator, Bond & Goodwin & Tucker, Incorporated and has no jurisdiction in said cause No. 90,636, to proceed therein against said Relator; yet, unless restrained and prohibited by this Honorable Court, said Superior Court will proceed with the trial of said cause as against this Relator without having acquired jurisdiction as aforesaid, to the great loss and damage of the Relator, as herein shown; and the Relator has no plain, speedy and adequate remedy in the ordinary course of law.

XIV

That the said Superior Court for Spokane County in denying Relator's said motion to quash acted unlawfully, illegally, and without jurisdiction, and in violation of the

provisions of Clause 1 of the Fourteenth Amendment, and contrary to the decisions of the Supreme Court of the United States in similar cases.

Wherefore, Relator prays that a writ of prohibition be issued by this Honorable Court, directed to the Superior Court for Spokane County and to the Honorable Joseph B. Lindsley, Judge thereof, prohibiting said Superior Court for Spokane County and the judges thereof from proceeding with the trial of said cause as against the Relator, Bond & Goodwin & Tucker, Incorporated and from exercising any jurisdiction therein over said Relator; and commanding said Superior Court for Spokane County and [fol. 7] the judges thereof to desist and refrain from further proceedings in the matter specified herein until the further order of this Court, and to show cause before this Honorable Court in its courtroom at Olympia, Washington, on the — day of June, 1932, at the hour of 10 o'clock A. M. of said day, or as soon thereafter as counsel may be heard, why they and each of them should not be absolutely restrained from further proceedings in said matter as against said Relator, Bond & Goodwin & Tucker, Incorporated.

Frank E. Holman.

Subscribed and sworn to before me this 19th day of May, 1932. Eugene C. Luccock, Notary Public in and for the State of Washington, residing at Seattle. Todd, Holman & Sprague, Attorneys for Relator.

[fol. 8] Exhibit "A" to Affidavit and Application

In Superior Court of the State of Washington, County of Spokane

No. 90636

W. A. Monroe, Plaintiff,

v.

Vancouver Kraft Company, Ltd., a Corporation; Bond & Goodwin & Tucker, Inc., a Corporation; Gates Valve Bag Corporation, a Corporation; Columbia River Paper Mills, a Corporation, and Fred W. Leadbetter, Defendants

SUMMONS—Filed April 9, 1932

The State of Washington to Vancouver Kraft Company, Ltd., a Corporation; Bond & Goodwin & Tucker, Inc., a Corporation; Bates Valve Bag Corporation, a Corporation; Columbia River Paper Mills, a Corporation, and Fred W. Leadbetter, Defendants:

You, and each of you, are hereby summoned to appear within twenty (20) days after the service of this Summons upon you, exclusive of the day of service, and defend the above entitled action in the Court aforesaid, and answer the Complaint of plaintiff, and serve a copy of your Answer upon the attorneys whose names are subscribed to this Summons, at their address below stated, and, in case of your failure so to do, Judgment will be rendered against you according to the demand and prayer of the Complaint in said action, which will be filed with the Clerk of said Court, and a copy of which is herewith served upon you.

Wakefield & Witherspoon, Kimball & Blake, Herbert W. Erskine, 1224 Old National Bank Building, Spokane, Washington, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 9] EXHIBIT "B" TO AFFIDAVIT AND APPLICATION

IN SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF THURSTON

No. 90636

[Title omitted]

SHERIFF'S RETURN OF SERVICE—Filed May 6, 1932

STATE OF WASHINGTON,
County of Thurston, ss:

I, Claud Havens, Sheriff of Thurston County, State of Washington, do hereby certify that I received the Summons & Complaint on the 16th day of April, 1932; that on the 18th day of April, 1932, I duly served the same on Bond & Good-

win & Tucker, Inc., a corp'n, by delivering to and leaving with A. M. Kitto, Assistant Secretary of State for said defendant personally, in said Thurston County, a copy of said Summons & Complaint.

Dated this 18th day of April, 1932.

Claud Havens, Sheriff of Thurston County, Washington, by E. C. Teen, Deputy.

Sheriff's Fee: Service, $ 60; Mileage, $ 20.

[File endorsement omitted.]

[fol. 10] EXHIBIT "C" TO AFFIDAVIT AND APPLICATION

IN SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SPOKANE

No. 90636

[Title omitted]

SPECIAL APPEARANCE AND MOTION OF DEFENDANT BOND & GOODWIN & TUCKER, INCORPORATED, A DISSOLVED DELAWARE CORPORATION, FOR THE SOLE PURPOSE OF MOVING TO SET ASIDE THE RETURN AND QUASH SERVICE OF SUMMONS AND COMPLAINT AS AGAINST SAID DEFENDANT—Filed May 7, 1932

Comes now the defendant Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, and appearing specially through its undersigned attorneys for the purpose of this motion and not otherwise, moves the Court to set aside the return and quash the purported service of summons and complaint in this action, so far as the same relates to said defendant, for the following reasons:

(1) That no service of the summons and complaint herein has been made upon said Bond & Goodwin & Tucker, Incorporated, or upon any officer or agent of said Bond & Goodwin & Tucker, Incorporated, and neither said Bond & Goodwin & Tucker, Incorporated, nor any of its officers or agents have in fact received any summons or complaint herein, or any notice or knowledge of the character or

[fol. 11] nature of the action, except through hearsay and report.

(2) That the purported service of summons and complaint herein upon said defendant Bond & Goodwin & Tucker, Incorporated, was made on or about the 18th day of April, 1932 by plaintiff's causing one copy of said summons and complaint to be left with the Secretary of State of the State of Washington; that the return and proof of service herein as against said defendant Bond & Goodwin & Tucker, Incorporated discloses that the only service of said summons and complaint upon the said Bond & Goodwin & Tucker, Incorporated was attempted by leaving a copy thereof with said Secretary of State of the State of Washington.

That the said Secretary of State of the State of Washington did not forward to said defendant Bond & Goodwin & Tucker, Incorporated, or any of its officers or agents, said summons and complaint so left with him or any copy thereof or any notice regarding the same, and claims to be under no legal duty to forward to said defendant Bond & Goodwin & Tucker, Incorporated, or any of its officers or agents, said summons and complaint and under no legal duty to furnish said defendant Bond & Goodwin & Tucker, Incorporated with a copy thereof or any notice regarding the same.

(3) That the provisions of §3854 Remington's Compiled Statutes of Washington (1922), under which service of summons and complaint was attempted upon said defendant Bond & Goodwin & Tucker, Incorporated, are in conflict with the provisions of Clause 1 of the Fourteenth Amendment to the Constitution of the United States and therefore unconstitutional and void for the reason that the particular provisions of said section regarding service upon a foreign corporation, where such corporation has withdrawn from the State, do not require the Secretary of State to give such corporation any notice of said service.

[fol. 12] (4) That the provisions of said §3854 Remington's Compiled Statutes of Washington (1922) are also in conflict with Clause 1 of the Fourteenth Amendment to the Constitution of the United States in that the provisions of

said section wrongfully discriminate against a foreign corporation in that they are less favorable than the similar provisions regarding service contained in §227 Remington's Compiled Statutes of Washington (1922) as to service on domestic corporations where no officer or agent of said corporation can be found in the State, and further wrongfully discriminate against a foreign corporation like the defendant Bond & Goodwin & Tucker, Incorporated herein in that they are less favorable than the similar provisions of §7044 Remington's Compiled Statutes of Washington (1922) regarding service on foreign insurance companies.

(5) That even if §3854 Remington's Compiled Statutes of Washington (1922) is constitutional, it does not, by its own terms, authorize service of summons and complaint upon defendant Bond & Goodwin & Tucker, Incorporated by leaving a copy thereof with the Secretary of State of the State of Washington, since there is on file with said Secretary of State an appointment of a statutory agent which has never been revoked.

(6) Moreover, if the attempted service was in fact on Mr. Kitto, the Assistant or Deputy Secretary of State, as a return of service on file shows, or seems to indicate, the service is bad per se and equally bad under the constitutional objections above relied upon.

This motion is based upon the records and files herein and upon the affidavits of Donald Y. Lamont, Benton G. Wood, and J. Grant Hinkle, hereto attached.

Todd, Holman & Sprague, Attorneys Appearing Specially for Defendant Bond & Goodwin & Tucker, Incorporated, a Dissolved Delaware Corporation.

[File endorsement omitted.]

[fol. 13] Affidavit of Donald G. Lamont—Filed May 7, 1932

State of California,
City and County of San Francisco, ss:

Donald Y. Lamont, being by me first duly sworn, deposes and says:

That he is, and at all of the times herein mentioned has been, an attorney-at-law with offices and practicing in the City and County of San Francisco, State of California.

That he is familiar with, had charge of and directed the proceedings taken and had leading up to and culminating in the withdrawal of Bond & Goodwin & Tucker Incorporated, a dissolved Delaware corporation, from the State of Washington, and the dissolution of said corporation.

That at a meeting of the Board of Directors of said corporation held on the 29th day of November, 1929, a resolution was duly adopted providing, among other things, that said corporation withdraw from the transactions of business in said State of Washington and cease to transact any further business in said state, and that the President and Secretary of said corporation be authorized and directed to take such steps as might be necessary to bring about the withdrawal of said corporation from the transaction of business in said State of Washington; that pursuant to the authority conferred by said resolution, a Certificate of Withdrawal of said corporation from said State of Washington, dated November 29th, 1929, was filed in the office of the Secretary of State of said State of Washington on the 5th day of December, 1929.

That at a meeting of the Board of Directors of said corporation held on the 29th day of November, 1929, a resolution was duly adopted providing that whereas it was [fol. 14] deemed advisable, in the judgment of said Board of Directors, and most for the benefit of said corporation that said corporation should be dissolved, that said corporation be dissolved and that the written consent of all of the stockholders of said corporation to said dissolution be obtained, and that the President and Secretary and Treasurer of said corporation should, upon the obtaining of said written consent of said stockholders to said dissolution, file said consent in the office of the Secretary of State of the State of Delaware, together with a list of the names and residences of the directors and officers of said corporation certified by said President and Secretary and Treasurer; that all of the stockholders of said corporation having voting power, consented in writing to the dissolution thereof, and pursuant to the authority conferred by said resolution, said consent, together with a list of the names and resi-

dences of the directors and officers of said corporation, certified by said President and Secretary and Treasurer, was filed in the office of the Secretary of State of said State of Delaware on the 11th day of December, 1929, in compliance with the provisions and requirements of Section 39 of the General Corporation Law of said State of Delaware, being Chapter 65 of the Revised Statutes of 1915 of said State of Delaware, as amended.

That on said 11th day of December, 1929, said Secretary of State of said State of Delaware issued that certain Certificate of Dissolution, a true copy of which is attached hereto and marked Exhibit "A", and by this reference thereto made a part hereof, which said Certificate he caused to be published in one issue in a newspaper published in the county wherein the principal office of said dissolved corporation was situated and that said Secretary of State [fol. 15] caused an affidavit of the manager or publisher of said newspaper that said Certificate had been published one time, in said newspaper, to be filed in the office of said Secretary of State, which said Certificate of Dissolution was recorded in the office of the Recorder of the County in which the principal office of said corporation was maintained, to-wit, in the office of the Recorder of New Castle County, State of Delaware, on said 11th day of December, 1929, as provided by law.

Donald Y. Lamont.

Subscribed and sworn to before me this 27th day of April, 1932. Kathryn E. Stone, Notary Public in and for the City and County of San Francisco, State of California. (Notary Seal.)

[File endorsement omitted.]

[fol. 16] Exhibit "A" to Affidavit of Donald G. Lamont

State of Delaware, Office of Secretary of State

Certificate of Dissolution

To all whom these presents may come, Greeting:

Whereas, It appears to my satisfaction by duly authenticated record of the proceedings for the voluntary dissolu-

tion thereof, by the consent of all the stockholders deposited in my office, the Bond & Goodwin & Tucker, Incorporated, a corporation of this State whose principal office is situated at No. 7 West 10th Street, in the City of Wilmington, County of New Castle, State of Delaware, Corporation Trust Company of America being agent therein, and in charge thereof, upon whom process may be served, has complied with the requirements of the Corporation Laws of the State of Delaware, as contained in 1915, Section 1, to 2101, Section 187, Chapter 65 of the Revised Statutes of 1915, as amended, preliminary to the issuing of this certificate of dissolution,

Now, therefore, I, Charles H. Grantland, Secretary of State of the State of Delaware, do hereby certify that the said corporation did on the eleventh day of December A. D. 1929 file in the office a duly executed and attested consent, in writing, to the dissolution of said corporation executed by all the stockholders thereof, which said consent and the records of the proceedings aforesaid are now on file in my said office as provided by law.

In testimony whereof, I have hereunto set my hand and official seal, at Dover, this eleventh day of December in the year of our Lord one thousand nine hundred and twenty-nine.

(Signed) Charles H. Grantland, Secretary of State.
(Seal.)

[fol. 17] AFFIDAVIT OF BENTON G. WOOD—Filed May 7, 1932

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Benton G. Wood, being first duly sworn, deposes and says: That he was prior to the dissolution of Bond & Goodwin & Tucker, Incorporated, a Delaware corporation, the Secretary of said corporation, and that he is and at all times herein mentioned has been the Secretary of said Bond & Goodwin & Tucker, Incorporated, insofar as such office exists after the dissolution of said corporation; that no copy of the complaint or summons in an action in the Superior Court of the State of Washington, in and for the County of Spokane, entitled "W. A. Monroe, Plaintiff, vs.

Vancouver Kraft Company, Ltd., a corporation; Bond & Goodwin & Tucker, Inc., a corporation; Bates Valve Bag Corporation, a corporation; Columbia River Paper Mills, a corporation; and Fred W. Leadbetter, Defendants", and numbered 90636, has been delivered to or in any way served upon him, and that said action and the pendency thereof came to the knowledge of affiant only through hearsay; that upon information and belief affiant deposes and says that no copy of the complaint or summons in said action has been delivered to or in any way served upon any officer or director of said Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation.

Benton G. Wood.

Subscribed and sworn to before me this 29th day of April, 1932. Kathryn E. Stone, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[File endorsement omitted.]

[fol. 18] In Superior Court of the State of Washington, County of Spokane

No. 90636

[Title omitted]

Affidavit of J. Grant Hinkle, Secretary of State—Filed May 7, 1932

State of Washington,
County of Thurston, ss:

J. Grant Hinkle, being first duly sworn, deposes and says:

That he is now and has been for more than ten years last past the duly elected, qualified and acting Secretary of State of the State of Washington.

That on April 18, 1932 the Deputy Sheriff of Thurston County, Washington left with affiant one copy of the summons and complaint in the above entitled action, stating to

affiant that said copy of said summons and complaint was left with affiant for the purpose of securing jurisdiction of the defendant Bond & Goodwin & Tucker, Incorporated and making service thereon. That affiant caused said copy of summons and complaint so left with him to be stamped "Received" and filed in his office. That said summons and complaint was too voluminous to be readily copied and affiant has not furnished said defendant Bond & Goodwin & Tucker, Incorporated, or any of its officers or agents, with a copy of said summons and complaint, or any notice [fol. 19] thereof, and affiant knows of no statute requiring him to forward a copy of such summons and complaint, or notice thereof, to said defendant Bond & Goodwin & Tucker, Incorporated, or any of its officers or agents.

That the records in affiant's office disclose that said Bond & Goodwin & Tucker, Incorporated on April 9, 1926 appointed one Duncan Shaw, of Seattle, Washington, its statutory agent and filed notice of said appointment in affiant's office; that so far as affiant's records show, said appointment of Duncan Shaw has never been revoked; that so far as affiant's records disclose, affiant has never been appointed as an agent of Bond & Goodwin & Tucker, Incorporated for the purpose of service of process or otherwise.

That affiant's records disclose that a certificate of withdrawal of said Bond & Goodwin & Tucker, Incorporated dated November 29, 1929 was filed in the office of affiant December 5, 1929.

J. Grant Hinkle.

Subscribed and sworn to before me this 2nd day of May, 1932. A. M. Kitto, Notary Public in and for the State of Washington, Residing at Olympia, (Seal.)

[File endorsement omitted.]

[fol. 20] EXHIBIT "D" TO AFFIDAVIT AND APPLICATION

IN SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SPOKANE

No. 90636

[Title omitted]

AFFIDAVIT OF CLARK ERWIN—Filed May 6, 1932

STATE OF WASHINGTON,
County of Spokane, ss:

Clark Erwin, being first duly sworn on his oath, deposes and says:

That he is well acquainted with Duncan Shaw, formerly of Seattle, Washington; that the said Duncan Shaw is a brother-in-law to affiant; that affiant knows that Duncan Shaw removed from the State of Washington sometime during the year 1929 and ever since said time has been a resident of the State of California; that said Duncan Shaw is the same Duncan Shaw who was formerly the *the* statutory agent for the State of Washington of Bond & Goodwin & Tucker, Inc.

Clark Erwin.

Subscribed and sworn to before me this 4th day of May, 1932. P. W. Kimball, Notary Public for the State of Washington, Residing at Spokane.

[File endorsement omitted.]

[fol. 21] EXHIBIT "D" TO AFFIDAVIT AND APPLICATION

IN SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SPOKANE

No. 90636

[Title omitted]

AFFIDAVIT OF PARKER W. KIMBALL—Filed May 11, 1932

STATE OF WASHINGTON,
County of Spokane, ss:

Parker W. Kimball, being first duly sworn on his oath, deposes and says:

That he is one of the attorneys for the above named plaintiff and makes this affidavit in his behalf; that affiant

is familiar with the general corporation law of the State of Delaware, which said law was enacted March 10, 1899, amended by the revised statute in 1915, and further amended by the 95th, 96th, 97th, 99th, 100th, 101st, 102nd and 103rd general assembly of said State of Delaware; that section 40 of said general corporation law of the State of Delaware, which is now in force and effect and was in force and effect on the eleventh day of December, 1929, reads as follows:

"Sec. 40. Continuation of Corporation After Dissolution for Purposes of Suit, Etc.—All corporations, whether they expire by their own limitation, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock but not for the purpose of continuing the business for which said corporation shall have been established; provided, however, that with respect to any action, suit or proceeding begun or commenced by or against the corporation prior to such expira-
[fol. 22] tion or dissolution and with respect to any action, suit or proceeding begun or commenced by the corporation within three years after the date of such expiration or dissolution, such corporation shall only for the purpos*t* of such action, suits or proceedings so begun or commenced be continued bodies corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed."

That there is on file in said action the certificate of J. Grant Hinkle, Secretary of State of the State of Washington, certifying that the said Bond & Goodwin & Tucker, Inc., filed a certificate of withdrawal from the State of Washington on December 5, 1929, and that at the time of its withdrawal Duncan Shaw of Seattle, Washington was the statutory agent of said corporation upon whom service of process might be had; that affiant knows that said Duncan Shaw removed from the State of Washington during the year 1929; that the records of the office of the Secretary

of State, as will appear from the certificate of J. Grant Hinkle, show that no new appointment of statutory agent has been made for said defendant corporation.

Parker W. Kimball.

Subscribed and sworn to before me this 9th day of May, 1932. Charles P. Lund, Notary Public for the State of Washington, Residing at Spokane.

[File endorsement omitted.]

[fol. 23] EXHIBIT "E" TO AFFIDAVIT AND APPLICATION

IN SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SPOKANE

No. 90636

[Title omitted]

ORDER DENYING MOTION TO QUASH—Filed May 16, 1932

This matter came on regularly for hearing on May 14, 1932, upon special appearance of defendant, Bond & Goodwin & Tucker, Inc., with motion to quash the service of summons and complaint in said action.

Upon hearing said motion and the argument of the same and being fully advised in connection therewith;

It is hereby ordered that said motion be and the same is hereby denied with exception granted to said defendant;

It is further ordered that a stay of proceedings for a period of ten days be and is hereby granted to said defendant.

Done in open court this 16th day of May, 1932.

Joseph B. Lindsley, Superior Judge.

Bruce Blake.

[File endorsement omitted.]

[fol. 24] EXHIBIT "F" TO AFFIDAVIT AND APPLICATION

IN SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SPOKANE

No. 90636

[Title omitted]

SPECIAL APPLICATION FOR STAY OF PROCEEDINGS—Filed May 14, 1932

The motion of Bond & Goodwin & Tucker, Incorporated heretofore made herein to quash service of summons and complaint having been denied by the Court—comes now said Bond & Goodwin & Tucker, Incorporated, through its undersigned attorneys, and relying upon and reserving its special appearance and its said motion to quash and not intending to appear generally, hereby requests a fifteen-day stay of proceedings as against it in order to enable its attorneys to apply to the Supreme Court of the State of Washington for an alternative writ of prohibition and/or certiorari for the sole purpose of seeking a review in said appellate court of the action of this Court in denying said motion to quash.

Todd, Holman & Sprague, Attorneys Appearing Specially for Defendant Bond & Goodwin & Tucker, Incorporated, a Dissolved Delaware Corporation.

[File endorsement omitted.]

[fol. 25] Clerk's certificate to foregoing papers omitted in printing.

[fol. 26] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

No. 24002

[Title omitted]

ORDER TO SHOW CAUSE AND ALTERNATIVE WRIT OF PROHIBITION—Filed May 19, 1932

The State of Washington to the Superior Court of the State of Washington for Spokane County and to the Honorable Joseph B. Lindsley, as Judge Thereof:

Whereas the Relator above named, Bond & Goodwin & Tucker, Incorporated, has heretofore filed herein its Application and Affidavit for Writ of Prohibition and for an Order directing the Superior Court for Spokane County and said Hon. Joseph B. Lindsley, as Judge thereof, to show cause, if any they have, why the Writ of Prohibition should not be issued as prayed for in said Application, and also for an Order of this Court directing said parties to desist and refrain from further proceedings as against said Relator, Bond & Goodwin & Tucker, Incorporated, in Cause No. 90636 in the Superior Court for Spokane County entitled: W. A. Monroe, Plaintiff, v. Vancouver Kraft Company, Ltd., a corporation, Bond & Goodwin & Tucker, Inc., a corporation, et al., Defendants, and particularly to desist and refrain from exercising any jurisdiction over said Relator in said cause; and

[fol. 27] Said Relator having shown good cause for the issuance of an Order to Show Cause and Alternative Writ of Prohibition herein;

Now, therefore, you are hereby commanded to be and appear before this Court on the 10th day of June, 1932 at the hour of 10 o'clock A. M. of said day, at the court room of this Court at Olympia, Washington, then and there to show cause, if any you have, why the Writ of Prohibition as prayed for in said Application (copy of which Application is hereby ordered to be served upon you with this Order) should not be granted.

You are also further commanded to desist and refrain from any further proceedings in said matter against said Relator, Bond & Goodwin & Tucker, Incorporated, and from exercising any jurisdiction over said Relator in said Cause No. 90636 until the further order of this Court.

This Order, when attested by the Clerk of this Court, shall constitute an Alternative Writ of Prohibition and may be served upon said Superior Court for Spokane County and the Judges thereof by delivering to respondent Joseph B. Lindsley a true and correct copy of this Order, together with a true and correct copy of Relator's Application and Affidavit referred to herein.

Dated at Olympia this 19 day of May, 1932.

Warren W. Tolman, Chief Justice.

Attest:

Fred S. Guyot, Deputy Clerk.

[fol. 28] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

No. 24002

[Title omitted]

DEMURRER—Filed June 9, 1932

Comes now the respondent in the above entitled action and demurs to the application of the relator herein on the ground and for the reason that said application and the petition supporting the same do not state facts to entitle the relator to the relief prayed for or to any relief.

Kimball & Blake, Wakefield & Witherspoon, Herbert W. Erskine, Attorneys for Respondent.

Service admitted June 8th, 1932.

Todd, Holman & Sprague, Attorneys for Relator.

[fol. 29] IN SUPREME COURT OF WASHINGTON

No. 24002

[Title omitted]

RETURN TO ALTERNATIVE WRIT OF PROHIBITION

STATE OF WASHINGTON,
County of Spokane, ss:

Joseph B. Lindsley, being first duly sworn, deposes and says:

That the complaint in the above entitled action consists of one hundred and fifty-seven causes of action, all of which are identical except as to the name of the assignor of the respective causes of action, the par value of the bonds purchased by such assignor and the amount of damage claimed; that Exhibit "A" hereto attached is a true

and correct copy of the first cause of action set out in the complaint.

Joseph B. Lindsley.

Subscribed and sworn to before me this 27th day of June, 1932. P. W. Kimball, Notary Public for the State of Washington, Residing at Spokane.

[fol. 30] EXHIBIT "A" TO RETURN

IN SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SPOKANE

No. 90636

W. A. MONROE, Plaintiff,

vs.

VANCOUVER KRAFT COMPANY, LTD., a Corporation; BOND & GOODWIN & TUCKER, INC., a Corporation; Bates Valve Bag Corporation, a Corporation; Columbia River Paper Mills, a Corporation, and Fred W. Leadbetter, Defendants.

COMPLAINT

Comes now W. A. Monroe and for Complaint against the defendants alleges:

First Cause of Action

I

That Vancouver Kraft Company, Ltd., is a corporation, organized and existing under the laws of British Columbia, and doing business in the State of Washington; that Bond & Goodwin & Tucker, Inc., is a corporation organized under the laws of the State of Delaware, and, at the time the cause of action herein set forth arose, was authorized to do business in the State of Washington, had an office for transaction of business in and was transacting business in Spokane County, Washington; that Bates Valve Bag Corporation is a corporation, organized and existing under the

laws of the State of New Jersey, and at all times herein mentioned was and is doing business in the State of Washington; that Columbia River Paper Mills is a corporation, organized and existing under the laws of the State of Washington, and at all times herein mentioned was and is doing business in the State of Washington.

II

That, sometime prior to the month of May, 1928, the defendants, Fred W. Leadbetter, Columbia River Paper Mills and Bates Valve Bag Corporation, acquired some seventy acres of land at Port Mellon, British Columbia, upon which was situated the remnants of a kraft pulp mill. That plaintiff is informed and believes and therefore avers that, at the time of this purchase, the said kraft pulp mill was shut down and had not been operated for a number of years, and that the corporation which had operated it was defunct, and that it was acquired from the receiver, trustee or other person managing the affairs of said defunct corporation, and that said mill was not in any sense a going concern at the time of such acquisition. That contemporaneously with the said acquisition, the said Fred W. Lead- [fol. 31] better, Bates Valve Bag Corporation, Columbia River Paper Mills, and Bond & Goodwin & Tucker, Inc., for the purpose and with the intention and design of cheating and defrauding the public in general, and Genevieve Doran Porter, hereinafter in this cause of action called the purchaser, in particular, combined, confederated, connived, conspired and agreed together to form a corporation to acquire the said defunct kraft pulp mill, and to issue, sell and dispose of to the public, bonds of the par value of $1,000.00 and $500.00 each, in a total aggregate amount of $1,250,000.00 bearing interest at the rate of 6½%, purporting to be secured by a mortgage on said land and pulp mill; and to use the moneys derived from the issuance, sale and disposal of said bonds in the promotion scheme of rehabilitating the said mill and operating the said properties, so that they would derive profits from the sale of the bonds, and, if any profits were made from the operation of the mill, that they would get it, while, if a loss were suffered, persons lending the money by buying the bonds would suffer the loss. That, in furtherance of said design, pur-

pose and conspiracy to defraud the public in general and the said purchaser in particular, it was agreed that a corporation be organized to take over the property above referred to, and to issue and sell said bonds. That thereafter and in pursuance of, and in furtherance of said purpose, design and conspiracy, the defendants organized the Vancouver Kraft Company, Ltd., and caused the entire capital stock thereof to be issued to the defendants, Columbia River Paper Mills and Bates Valve Bag Corporation, and/or the agents and employees of both of said last mentioned corporations. That thereafter, and in pursuance of said conspiracy, and in pursuance of and in furtherance of said purpose, design and conspiracy, said defendants, Fred W. Leadbetter, Columbia River Paper Mills, Bates Valve Bag Corporation, and Bond & Goodwin & Tucker, Inc., caused the said Vancouver Kraft Company, Ltd., to issue said bonds in the principal sum of $1,250,000.00. That thereafter, and in pursuance of the said purpose, design and conspiracy, the said defendants, acting in concert and in performance of their common conspiracy, issued, offered for sale, sold and caused to be sold to the public in general and to the said purchaser in particular, the said bonds, and in so doing the said defendants made the following misrepresentations, to-wit:

(a) That Vancouver Kraft Company, Ltd., owned two thousand acres of timber land upon which there were forty million feet of timber suitable to the manufacture of kraft pulp;

(b) That the property of Vancouver Kraft Company, Ltd., was a going concern and engaged in producing high grade sulphate pulp used in the manufacture of kraft paper, and that the funds from the sale of the bonds would be used in the extension and improvement of its then present plant;

(c) That the Vancouver Kraft Company, Ltd., had entered into long term, binding and enforcible contracts with responsible persons, firms and corporations, among whom were the Columbia River Paper Mills and Bates Valve Bag Corporation, for its entire output at prices more than sufficient to cover operating and fixed charges and sinking

fund and interest requirements under the trust indenture given to secure the said bonds;

(d) That the Vancouver Kraft Company, Ltd., owned a water power site on which it would immediately erect a hydro-electric power plant capable of developing 2900 horsepower;

(e) That while the purported balance sheet and audit of Haskins & Sells showed liquid assets of only $73,483.49, the [fol. 32] Columbia River Paper Mills and Bates Valve Bag Corporation had subscribed for and were obligated to pay upon call for $400,000.00 of the preference 7% cumulative capital stock of the said Vancouver Kraft Company, Ltd., which would furnish the said Vancouver Kraft Company, Ltd., with sufficient and adequate working capital for its operations and for the completion of the additions and alterations of its plant for which it was represented the money from the sale of said bonds was to be used.

III

That each and all of the representations set forth in the preceding paragraph were false and untrue, and were known to be false by the said defendants at the time they were made. That they were uttered and made by the said defendants to the public generally, and to the said purchaser in particular, with the intention that they should rely upon them and be deceived by them, and with the intention that they should be induced by them to purchase the said bonds, which the said defendants had conspired, connived and colluded together to sell as aforesaid, and for the purpose of securing from them, as aforesaid, the moneys represented by the face amount of said bonds. That, in addition to the said misrepresentations, the said defendants failed and neglected to make it known to the said public in general, and to the said purchaser in particular, that the said plant had not been operated for a number of years, and was in no sense a going concern at the time of the acquisition of it by the said defendants. That, on the contrary, these defendants suppressed and concealed such information from the public in general, and from the said pur-

chaser in particular, for the said purpose and in pursuance of the said design and conspiracy.

IV

That the purported audit of Haskins & Sells was not a true statement of the assets or earning power of Vancouver Kraft Company, Ltd.; that Vancouver Kraft Company, Ltd., did not own two thousand acres of timber land nor forty million to fifty million feet of timber suitable to the manufacture of kraft pulp, and in fact did not own any timber land or timber suitable to the manufacture of kraft pulp; that Vancouver Kraft Company, Ltd., did not have long term enforcible contracts with responsible persons, firms and corporations, including the Columbia River Paper Mills and Bates Valve Bag Corporation, for the sale of its entire output; that Vancouver Kraft Company, Ltd. did not own a power site capable of developing 2900 horsepower, and has not, and did not intend to erect a hydro-electric plant capable of producing 2900 horsepower, and did not erect any hydro-electric plant whatever for use in connection with its property; that Vancouver Kraft Company, Ltd., never did complete its kraft paper mill, and did not install the machinery therein, and was not in a position to carry out any contracts for the sale of its output, even though it had contracts for the sale of the same. That the said Columbia River Paper Mills and Bates Valve Bag Corporation had not subscribed for sufficient preference 7% cumulative stock of the Vancouver Kraft Company, Ltd., to require them to pay upon call to the said Vancouver Kraft Company, Ltd., the sum of $400,000.00, or any sum whatsoever, and that the said Vancouver Kraft Company, Ltd., did not have funds enough to complete the construction of its said plant and operate the same, and that the said plant at the present date is incompleted, is not in operation, and never has been in operation.

V

That, relying upon said representations and believing [fol. 33] them to be true, and without any knowledge as to the falsity thereof, the purchaser purchased bonds of said issue of the par value of $2,000.00, and paid therefor the par value thereof. That, if said representations had not

been made to said purchaser, and if said purchaser had known that this was a mere promotion scheme and that the said mill, at the time of its acquisition by the defendants, was not in any sense a going concern, said purchaser would not have bought the bonds.

VI

That, had the representations been true, the bonds so purchased would have been worth the par value thereof. That, by reason of the falsity of said representations, the said bonds are secured by an incompleted saw mill and paper plant, which was never in operation, and for which, if the same were sold at a foreclosure sale, little, if anything, would be realized. That, by reason of the fact that it never operated, and by reason of the premises, the said bonds have no value whatsoever in excess of $10.00 per $1,000.00 of face value. That by reason of the premises and by reason of the said misrepresentations, the said purchaser was damaged in the sum of $1,980.00, no part of which sum has been paid.

VII

That said defendants paid or caused to be paid the installment of principal and interest due upon said bonds November 15, 1930, thus causing bondholders to feel that the representations above referred to were true and that said Vancouver Kraft Company, Ltd., was a going concern and was earning from the operation of its plant the necessary funds to meet payments due under said bonds. That the interest payment due May 15, 1931, was allowed to default, and upon such default said purchaser, together with other bondholders, commenced investigations which finally led to the discovery of the misrepresentations aforesaid. That said purchaser did not and could not by reasonable diligence have discovered the falsity of said representations prior to that time.

VIII

That prior to the commencement of this suit the above named purchaser transferred in writing to plaintiff all right, title and interest in and to all demands, claims or action which said purchaser has or had against the above named defendants by reason of the fraud perpetrated as above set forth.

[fol. 34] IN SUPREME COURT OF WASHINGTON

En Banc

No. 24002

THE STATE OF WASHINGTON on the Relation of BOND & GOODWIN & TUCKER, Incorporated, a Dissolved Delaware Corporation, Relator,

v.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY and Honorable Joseph B. Lindsley, Judge Thereof, Respondents

OPINION—Filed Oct. 13, 1932

This is an application for a writ of prohibition directed to the superior court of Spokane county.

The relator, Bond & Goodwin & Tucker, was a corporation organized under the laws of Delaware. About the year 1926, it qualified with the laws of this state relating to foreign corporations that desired to do business here. It opened an office in the city of Spokane, and appointed a statutory agent. On or about November 29, 1929, the corporation ceased to transact business in this state, and withdrew therefrom. During the same year the statutory agent left this state and went to California, where he has since continuously resided.

W. A. Monroe commenced an action in the superior court of King county against the corporation, and on April 18, 1932, caused a copy of the summons and complaint to be left in the office of the secretary of state of this state. The summons and complaint were delivered to an assistant secretary of state, and were stamped "received" and filed. No notice of the receipt of the copy of the summons and [fol. 35] complaint and the filing thereof was sent by that officer to the corporation or any of its officers.

By a statute of the state of Delaware, it is provided that all corporations, whether they expire by their own limitation or are otherwise dissolved, may nevertheless be continued for the term of three years from such expiration or dissolution for the purpose of prosecuting or defending suits by or against them. The notice of dissolution of the

corporation was filed with the secretary of state of this state December 5, 1929. Section 3854, Rem. Comp. Stat., provides that, in case a foreign corporation shall revoke the authority of its designated agent after its withdrawal from the state and prior to the time the statutes of limitations shall run against causes of action accruing against it, "then in that event service of process, pleadings and papers in such actions may be made upon the secretary of state of the state of Washington, and the same shall be held as due and sufficient service upon such corporation." It will be noticed that in that provision for substituted service there is no requirement that the secretary of state shall forward notice to the corporation or to its officers. After the action was begun in the superior court, the corporation entered a special appearance and moved to quash the service; which motion was denied, and the corporation applied here for the writ, above indicated.

The first question is whether the superior court had jurisdiction by reason of the service upon the secretary of state, in view of the fact that the statute of this state did not require that officer to send notice to the corporation or its officers. In this connection, it is contended that the statute is unconstitutional under the Fourteenth Amendment to the [fol. 36] Constitution of the United States, which provides, among other things, that no state shall deprive any person of property "without due process of law." It is said that, in order to satisfy the requirement of the federal constitution, the statute should have provided that the secretary, after a copy of the summons and complaint were served upon him, should have sent notice to the corporation, the defendant in the action.

In Mutual Reserve Fund Life Assn. v. Phelps, 190 U. S. 147, a foreign corporation had gone into the state of Kentucky, complied with its laws, and afterwards ceased to do business therein because it was required to withdraw from the state. It was pointed out in the opinion that whether it voluntarily withdrew, or compulsorily, was immaterial. In that state, there was a statute which provided that, where a foreign corporation had come into the state, qualified with the laws thereof with reference to doing business, and had subsequently withdrawn, service of process could be had upon it by serving the state insurance commissioner. In that case, after referring to and quoting from the opin-

ion of the court of appeals of Kentucky sustaining the service and commenting thereon, it was said:

"As an original question, and independently of any expression on the part of the court of appeals, we are of the opinion that such is the true construction. This and other kindred statutes enacted in various states indicate the purpose of the state that foreign corporations engaging in business within its limits shall submit the controversies growing out of that business to its courts, and not compel a citizen having such a controversy to seek for the purpose of enforcing his claims the state in which the corporation has its home. Many of those statutes simply provided that the foreign corporation should name some person or persons upon whom service of process could be made. The insufficiency of such provision is evident, for the death or removal of the agent from the state leaves the corporation without any person upon whom process can be served. In order to remedy this defect some states, Kentucky among the number, have passed statutes, like the one before us, providing that the corporation shall consent that service may be made upon a permanent official of the state, so [fol. 37] that the death, removal or change of officer will not put the corporation beyond the reach of the process of the courts. It would obviously thwart this purpose if this association, having made, as the testimony shows it had made, a multitude of contracts with citizens of Kentucky, should be enabled, by simply withdrawing the authority it had given to the insurance commissioner, to compel all these parties to seek the courts of New York for the enforcement of their claims. It is true in this case the association did not voluntarily withdraw from the state, but was in effect by the state prevented from engaging in any new business."

It is true that there is no mention made in that opinion as to whether the state statute contained a provision for notice in the event of service upon a state officer, but the doctrine is plainly stated that the corporation, by complying with the laws of the state, consented to service upon an official of the state in accordance with the laws of that state.

In Wuchter v. Pizzutti, 276 U. S. 13, the court had before it a statute of the state of New Jersey, which provided that in actions by residents of that state against non-residents

for personal injuries resulting from the operation by the latter of a motor vehicle on the state highways, service of summons could be made on the secretary of state as their agent, and it was there held that jurisdiction could not be obtained under the statute by serving the state officer because there was no provision in the statute that the officer should give notice to the defendant. In that case, the non-resident operator of the automobile against whom the action was brought had not impliedly consented to be bound by the laws of the state of New Jersey, as is the case of a foreign corporation coming into a state to do business and qualifying with its laws. In the opinion in that case it was pointed out that statutes providing that non-resident corporations may properly be served by leaving summons with a state officer, where the corporation has not indicated a [fol. 38] resident agent to be served, were not particularly applicable to the situation then before the court. After reviewing a number of decisions from the state courts, the court concluded with the statement that the general trend of authority was toward sustaining the validity of service of process, provided there is a reasonable probability that, if the statute was complied with, the defendant would receive notice. It was there held that:

"The cases, in which statutes have been upheld providing that non-resident corporations may properly be served by leaving a summons with a state official, where the corporation has not indicated a resident agent to be served, are not especially applicable to the present statute. Pennsylvania Fire Insurance Co. v. Gold Issue Mining Co., 243 U. S. 93; Simon v. Southern Ry. Co., 236 U. S. 115; Old Wayne Mutual Life Association v. McDonough, 204 U. S. 8. Such corporations may properly be required to accept service through a public officer as a condition of their doing business in the state. Their knowledge of the statutory requirement may perhaps prompt frequent inquiry as to suits against them, of their appointed agent or at the office of the public official to be served, but it could hardly be fair or reasonable to require a non-resident individual owner of a motor vehicle who may use the state highways to make constant inquiry of the secretary of state to learn whether he has been sued. Even in cases of non-resident corporations, it has been held that a statute directing service upon them by leaving process with a state official is

void if it contains no provision requiring the official, upon whom the service may be made, to give the foreign corporations notice that suit has been brought and citation served. * * * These cases and others indicate a general trend of authority toward sustaining the validity of service of process, if the statutory provisions in themselves indicate that there is reasonable probability that if the statutes are complied with, the defendant will receive actual notice, and that is the principle that we think should apply here."

It will be seen that it is expressly pointed out in the opinion that "such corporations [foreign corporations] may properly be required to accept service through a public officer as a condition of their doing business in the state." Following this, it is pointed out that their knowledge of the statutory requirements may prompt frequent inquiry as to suits against them, by their appointed agent or at the office [fol. 39] of the public official to be served, but that it would hardly be fair and reasonable to require "a non-resident individual owner of a motor vehicle who may use the state highways to make constant inquiry of the secretary of state to learn whether he has been sued."

In Consolidated Flour Mills Co. v. Muegge, 278 U. S. 559, the court reversed, without an opinion, upon the authority of Wuchter v. Pizzutti, 276 U. S. 13, supra, a decision of the supreme court of Oklahoma sustaining the service upon a foreign corporation, which had done business in that state, by serving a state officer. In that case, however, as expressly pointed out in the decision of the supreme court of Oklahoma (Consolidated Flour Mills Co. v. Muegge, 127 Okla. 295), "the defendant had not obtained authority to do business in the state of Oklahoma and had not designated an agent upon whom service of process could be made." It had not therefore consented to be bound by the laws of that state with reference to the service of process. The statute of Oklahoma did not provide for notice by the officer to the corporation.

There appears to us to be a clear distinction between a foreign corporation which goes into a state, complies with the laws thereof, and thereby consents to be bound by such laws, and an individual who merely passes through a state in an automobile or a corporation which has done business in the state without compliance with these laws and without

consenting to be bound thereby. This distinction is recognized in Penna. Fire Ins. Co. v. Gold Issue Mining Co., 243 U. S. 93, where, after referring to certain cases, it is said:

"In the above mentioned suits the corporations had been doing business in certain states without authority. They had not appointed the agent as required by statute, and it [fol. 40] was held that service upon the agent whom they should have appointed was ineffective in suits upon causes of action arising in other states. The case of service upon an agent voluntarily appointed was left untouched. 236 U. S. 129, 130. If the business out of which the action arose had been local it was admitted that the service would have been good, and it was said that the corporation would be presumed to have assented."

This same distinction is recognized in the case of Wuchter v. Pizzutti, 276 U. S. 13, supra, where it is pointed out that foreign corporations may properly be required to accept service through a public officer as a condition of their doing business in the state. It is true that as a general rule a foreign corporation, by seeking and obtaining permission to do business in a state, does not thereby become obligated to comply with or estopped from objecting to any provision of the state statutes which may be in conflict with the constitution of the United States. Hanover Fire Ins. Co. v. Carr, 272 U. S. 494; Power Mfg. Co. v. Saunders, 274 U. S. 490. But before that rule would become applicable, it must definitely appear that the state statute impinges upon the federal constitution.

The question of whether the statute of this state under which service of process was made in this case provides for due process of law presents primarily a federal question. As we understand the decisions of the supreme court of the United States, it has not yet been definitely determined that a statute, such as the one now before us, is obnoxious to the Fourteenth Amendment to the federal constitution. It will be admitted that the question is by no means free from doubt, but we think that the doubt by this court should be resolved in favor of sustaining the jurisdiction of the superior court. If we are in error in this, after the case has been tried upon

the merits and there is another appeal, the question can [fol. 41] then be considered again, and that error can be corrected by the federal supreme court, which is the court of last resort and highest authority. On the other hand, if we should deny the jurisdiction and be in error, an injustice would be done which could not later be corrected.

The next question is whether the statute denies to the relator, the corporation, the equal protection of the laws. In the Fourteenth Amendment to the federal constitution it is provided that no state shall make or enforce any law which "shall abridge the privileges or immunities of citizens of the United States". It is said that the law now before us discriminates against a foreign corporation in the manner of service as against a domestic corporation or an insurance company, because, with reference to those, the statutes (Rem. Comp. Stat. §227 and §7040) provide that, when service cannot be obtained upon a corporation, process may be served upon the secretary of state and he is required to give notice thereof. In Power Mfg. Co. v. Saunders, 274 U. S. 490, it is pointed out that there may be subjects as to which foreign corporations may be differently classified from domestic. This question, like the one previously considered, is in the doubtful zone, and, for the reasons already indicated, we think that doubt should be resolved at the present time in favor of sustaining the statute.

There is the further contention that the service upon the assistant secretary of state was not sufficient, and that, to be effective, it was necessary that it be served upon the secretary of state. While the statute says "secretary of state", it would be hypertechnical to hold that service upon [fol. 42] an assistant secretary did not comply with the statute.

The writ will be denied, with leave to present the questions again after an appeal from the judgment upon the merits, if there is such an appeal.

Main, J.

We concur:

Tolman, C. J.; Herman, J.; Beals, J.; Mitchell, J.; Millard, J.

[fol. 43] IN SUPREME COURT OF WASHINGTON

No. 24002

DISSENTING OPINION

HOLCOMB, J., dissenting:

The service of summons and complaint on Bond & Goodwin & Tucker, Inc., was attempted to be made under the provisions of Rem. Comp. Stat., §3854, relating to foreign or non-resident corporations, which, after prescribing how such corporations shall constitute and appoint agents, change them from time to time, and file notice of such appointments in the office of the secretary of state, in part, reads:

"In case said corporation shall revoke the authority of its designated agent after its withdrawal from this state and prior to the time when the statutes of limitations would have run against causes of action accruing against it, then in that event service of process, pleadings and papers in such actions may be made upon the secretary of state of the state of Washington, and the same shall be held as due and sufficient service upon such corporation."

The objection of relator to the service attempted under the statutory provisions above quoted, is that it would deprive relator of its property without due process of law and in violation of clause one of the fourteenth amendment to the United States constitution and is therefore void.

It must first be noted that our statute providing for service upon nonresident corporation makes no provision for notice by the secretary of state to the corporation, or the delivery of a copy of the process by him to such corporation.

Wuchter v. Pizzutti, 276 U. S. 13, involved a statute of New Jersey, which provided that in actions by residents of that state against nonresidents for personal injuries resulting from the operation by the latter of their motor vehicles on the state highways, service of summons might be made on the secretary of state, as their agent, which contained no further provision making it reasonably probable that notice of such service would be communicated to the defendants, held that the statute was lacking in due process of law, reversing the state court, 103 N. J. L., 130. A valid

[fol. 44] reason would have been the fact that in such personal injury cases there would be little likelihood, unless notice by the secretary of state was required, such transient, nonresident defendants would receive any notice and judgments could be obtained against responsible nonresident defendants without notice, thus taking property without due, or any process, and in violation of the Federal Constitution.

A case decided by the supreme court of Virginia, Du Pont Engineering Co. v. John P. Harvey Const. Co., — Va. —, 158 S. E. 891, decided some three years after the decision in the Wuchter case, supra, seemed logical in reasoning and in result, sustaining substituted service on a state officer.

Examination discloses, however, that the Du Pont case, which did not fully set out the provisions of the Virginia statute, followed an earlier case by the same court, American Ry. Express Co. v. Fleishman, Morris & Co., — Va. —, 141 S. E. 253, which did. The statutes of Virginia there set out were §3845 and §3846, Code of 1919, the first section of which had similar provisions to the first provisions of our §3854, supra, relating to foreign corporations; and the second section provided that whenever lawful process against, or notice to, any such company or society should be served as provided in the preceding section, the secretary of the commonwealth should forthwith mail a copy of such process or notice to the company or society, etc.

It is thus seen that the Virginia statute contained a provision for notice to be forwarded by the secretary of the commonwealth to the nonresident corporation, which the New Jersey statute did not prescribe as to nonresident defendants, whether private or corporate.

In another case, The Consolidated Flour Mills Co. v. Muegge, et al., 278 U. S. 559, that court reversed a decision [fol. 45] by the supreme court of Oklahoma, merely saying: "Reversed on the authority of Wuchter v. Pizzutti, 276 U. S. 13."

It is necessary, therefore, to turn to the decision of the supreme court of Oklahoma in the last cited case to determine what statute was there interpreted, which that court decided was not in contravention of the fourteenth amendment or due process clause of the Federal constitution. (260 Pac. 745). That court, cited as a case in point, Kaw

Boiler Works v. Frymyer, 227 Pac. 453. In the last citation the statute of Oklahoma, relating to service on foreign corporations doing business in Oklahoma and which had failed to appoint an agent, was quoted, which provided:

"Service of summons or any process upon the secretary of state shall be sufficient to give jurisdiction of the person to any court in this state having jurisdiction of the subject matter."

In these two cases the Oklahoma court reviewed a large number of cases, both state and Federal, bearing upon the question and held their statute would not contravene the Federal constitution. The supreme court, as is seen by the decision in 278 U. S., held that the statute did violate the provisions of the Federal constitution relating to due process and therefore reversed it.

It is to be observed that our insurance code, Rem. Comp. Stat., §7044, when providing for service against foreign insurance companies, requires duplicate copies to be served upon the state commissioner of insurance and upon such service being made, the commissioner shall forthwith mail one of such duplicate copies to the company at its home office or general agency, or in case of an alien company, to the resident manager, if any, in this country.

If §3854, supra, providing for service on a nonresident, or a withdrawing corporation, contained similar provisions, doubtless it would be valid under the Wuehter and Muegge decisions. But it has no such provision.

[Fols. 46 & 46½] As to its right to question such state laws as objectionable to provisions of the Federal constitution, after seeking and obtaining permission to do business in a state by a foreign corporation, see Powers Mfg. Co. v. Saunders, 274 U. S. 490, and cases cited, allowing such right.

This being the sole question to determine in this proceeding, as we are bound by the decisions of the supreme court of the United States respecting the law applicable, under these later decisions, I am forced to conclude that the writ should be granted.

For the foregoing reasons I dissent.

Holcomb, J.

I concur with Holcomb, J.

Steinert, J.; Parker, J.

[fols. 46-1 & 46-3] IN SUPREME COURT OF WASHINGTON

No. 24002

[Title omitted]

RELATOR'S PETITION FOR REHEARING

The Relator in the above entitled cause respectfully petitions the court for a rehearing thereof, upon the following grounds:

[fol. 46-4] I

This case admittedly involves Federal questions of "due process" and "equal protection of the laws"—which questions are necessarily to be determined in the light of the decisions of the Supreme Court of the United States. The majority opinion of this court, as filed, recognizes that the instant case is controlled and settled by the principles announced in the decisions in Consolidated Flour Mills vs. Muegge, 278 U. S. 559, and Wuchter vs. Pizzutti, 276 U. S. 13, unless these decisions can be distinguished.

The sole ground of distinction for avoiding the application of the Wuchter and Muegge cases is, as stated on page 6 of the majority opinion, that "the defendant (in the Muegge case) had not obtained authority to do business in the State of Oklahoma and had not designated an agent upon whom service of process could be made," whereas in the instant case the Relator did originally designate an [fol. 46-5] agent (to-wit, Duncan Shaw, but not at any time the Secretary of State) upon whom service of process might be made. Upon the sole basis of this suggested distinction the majority opinion concludes that the Relator therefore consented to be bound by the laws of Washington with reference to service of process upon the Secretary of State.

This conclusion is directly contrary to the principle of other decisions of the Supreme Court of the United States to the effect that a foreign corporation, by seeking and obtaining permission to do business in a state, does not thereby become obligated to comply with, or estopped from objecting to, any provision of a state statute which is in conflict with the Constitution of the United States. Upon page 7

of the majority opinion this immediately foregoing principle of constitutional law is expressly recognized, but followed by this illogical comment: "But before that rule [fol. 46-6] would become applicable it must definitely appear that the state statute impinges upon the Federal Constitution." This comment merely puts the matter back again to the original question, to-wit, whether "the Washington state statute does inpinge upon the Federal Constitution," which is the exact question decided by the Pizzutti and Muegge cases. In other words, the attempted distinction on the facts as between the Muegge case and the instant case immediately forces a recognition of another principle of constitutional law, to-wit, that under the facts there is no waiver of Relator's constitutional rights and therefore no distinction at all. This leaves the original question still the sole question for decision and the argument has merely proceeded in a circle.

Therefore, having got back to the original question, what principle in the Pizzutti case was relied upon for purposes of the Muegge per curiam decision? Clearly the following principle announced in the Pizzutti case, to-wit:

[fol. 46-7] "In the cases of non-resident corporations it has been held that a statute directing service upon them by leaving process with a state official is void if it contains no provision requiring the official upon whom service is made to give the foreign corporation notice that suit has been brought and citation served."

This quotation is directly in point in the instant case and it was upon the basis of this view, as categorically expressed in the Pizzutti case, that the Supreme Court in the Muegge case reversed the State Supreme Court of Oklahoma, and this language as exactly fits the Washington statute as it did the Oklahoma statute.

In view of the foregoing considerations appearing on the face of the majority opinion, we respectfully submit that a rehearing should be granted.

II

The majority opinion also discloses that substantial reliance is had upon certain language appearing in the earlier [fol. 46-8] case of Mutual Reserve Fund Life Ins. Co. vs.

Phelps, 190 U. S. 157. We respectfully submit and earnestly believe that if a rehearing is granted it will clearly appear to this Honorable Court that in that case and similar cases the state statutes under consideration definitely contained the very provision that is wholly absent from the Washington statute and is the basis of the Muegge decision, namely, the provision for notice requiring the official upon whom the service is made to give the foreign corporation notice that suit has been brought and citation served. The instant case ought not to go to the Supreme Court of the United States under any such misapprehension by this court of the nature of the statute before the Supreme Court in the Mutual Reserve Fund Life Ins. Co. case.

III

Apart from any matter of "due process," there is the question of "the equal protection of the laws" likewise [fol. 46-9] guaranteed by the Fourteenth Amendment to the Constitution of the United States. The majority opinion disposes of this question by merely saying that it is in the "doubtful zone." We respectfully submit that a constitutional question of this importance ought not to be indecisively dismissed and that a rehearing and reargument should be granted so that the matter may be more fully examined in the light of the decisions of the Supreme Court of the United States upon this question.

IV

Bound up with the foregoing considerations is the question of the validity of service made upon the assistant Secretary of State instead of upon the Secretary of State, as the statute expressly requires. This question is dismissed by the majority opinion as "hypertechnical" and without reference to the serious constitutional implications which the question raises. "Due process" under the Federal Constitution always means exact compliance with service stat- [fol. 46-10] utes. No alleged constructive consent to service of process upon a specifically designated state officer can possibly extend to service upon another or subordinate state officer. We respectfully submit that this question also should be further examined upon a rehearing and a reargument.

In this connection we beg to add that a point can hardly be treated as hypertechnical which has been previously considered and decided favorably to the Relator, not only in a former decision of this court, but in decisions by other State Courts and Federal Courts and by the Supreme Court of the United States.

Bennett vs. Maccabees, 40 Wash. 431.

Lonkey vs. Keyes Silver Mining Co. (Nev.), 31 Pac. 57 (specifically approved in the Bennett case, supra).

City of Watertown vs. Robinson, 69 Wis. 233, 34 N. W. 139.

Amy vs. Watertown, 130 U. S. 301, 32 L. ed. 946.

[fol. 46-11] In the Watertown case, supra, the Supreme Court of Wisconsin used the following language, which was afterwards approved and adopted by the Supreme Court of the United States in Amy vs. Watertown, 130 U. S. 301, 317:

"When the statute prescribes a particular mode of service, that mode must be followed. Ita lex scripta est. There is no chance to speculate whether some other mode will not answer as well. This has been too often held by this court to require further citations. * * * When the statute designates a particular officer to whom the process may be delivered, and with whom it may be left, as service upon the corporation, no other officer or person can be substituted in his place. * * * The designation of one particular officer upon whom service may be made excludes all others."

V

The concluding paragraph of the majority opinion reads as follows:

"The writ will be denied, with leave to present the questions again after an appeal from the judgment upon the [fol. 46-12] merits, if there is such an appeal."

The judicial effect of the foregoing language is uncertain and leaves grave doubt as to whether the court has effectually decided any of the constitutional questions here involved. This doubt is emphasized in the body of the opinion where, after stating that the question of the "equal pro-

tection of the laws" is in the "doubtful zone," the writer of the opinion adds the following:

"* * * we think that doubt should be resolved at the present time in favor of sustaining the statute."

The phrase "at the present time" is extremely confusing and uncertain in its judicial effect.

The foregoing disposition of the constitutional questions cannot be other than unsatisfactory to all parties concerned. Doubt and uncertainty regarding the jurisdictional question will overshadow the proceedings in the trial court, or, if a direct appeal is now taken to the Supreme Court of the [fol. 46-13] United States without the Supreme Court of Washington being definitely committed, either to the constitutionality or the unconstitutionality of the Washington statute, may not the Supreme Court of the United States say that this is not a final decision but merely an expression of views on the part of the Supreme Court of the State of Washington, with leave to the Relator to raise the matters later upon appeal from the trial court?

We respectfully submit that all parties to this case are entitled to a definite decision by this Honorable Court and that a rehearing and a reargument should be granted so that the doubts appearing on the face of the present majority opinion may be definitely resolved.

VI

The Relator's application for a writ of prohibition restraining the Superior Court of Spokane County from exer- [fol. 46-14] cising jurisdiction over the Relator as a defendant in the cause of Monroe vs. Vancouver Kraft, et al., now pending in said Superior Court, is an independent proceeding in which the Relator relies upon its rights under the Constitution of the United States; the judgment of this court in this proceeding is subject to direct review by the Supreme Court of the United States on a writ of error (now appeal).

Mount Vernon Woodberry Cotton Duck Co. vs. Alabama Interstate Power Co., 240 U. S. 30, 60 L. ed. 507.

Missouri vs. Taylor, 266 U. S. 200, 69 L. ed. 247.

Bandini Petroleum Co. vs. Court, 284 U. S. 8, 76 L. ed. (Adv. Op.) 123.

VII

The majority opinion filed October 13, 1932, erroneously recites on page 1 thereof that "W. A. Monroe commenced an action in the Superior Court of King County," whereas [fol. 46-15] in truth and in fact said action was begun in the Superior Court of Spokane County. Since this case may go to the Supreme Court of the United States we deem it our duty to call this error to the Court's attention.

In the same connection, we call attention to the error in the recital in the last paragraph on page 2 of said opinion where it is indicated that service was made "upon the Secretary of State," whereas in truth and in fact said service was made on the Assistant Secretary of State.

Dated this 10th day of November, 1932.

Respectfully submitted.

Todd, Holman & Sprague and Eugene C. Luccock, Attorneys for Relator.

[fol. 47] In Supreme Court of Washington

No. 24002

[Title omitted]

Order Denying Petition for Rehearing—Filed Dec. 2, 1932

The court having considered the relator's petition for rehearing and having today filed a per curiam opinion amending certain language in its opinion heretofore filed herein;

It is ordered, in accordance with the per curiam opinion that the petition be in all other respects denied.

Dated this 2 day of December, 1932.

By the Court.

Tolman, Chief Justice.

Todd, Holman & Sprague, Eugene C. Luccock, Kimball & Blake, Wakefield & W., Herbert W. Erskine.

[File endorsement omitted.]

[fol. 48] IN SUPREME COURT OF WASHINGTON

No. 24002

En Banc

THE STATE OF WASHINGTON on the Relation of BOND & GOODWIN & TUCKER, Incorporated, a Dissolved Delaware Corporation, Relator,

v.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE County and Honorable Joseph B. Lindsley, Judge Thereof, Respondents

OPINION ON PETITION FOR REHEARING—Filed Dec. 2, 1932

Per CURIAM:

Since the opinion in this case was filed, a petition for rehearing has been presented, in which it is said that, by reason of certain language in the body of the opinion and the concluding sentence, a doubt has arisen, or may arise, as to whether this court has rendered a final decision in the case. To the end that this doubt may be removed, one sentence in the body of the opinion, to which attention is called, and the concluding sentence will be changed in order that it may be definitely understood that this court has rendered a final decision in the cause.

The sentence in the body of the opinion, reading as follows:

"This question, like the one previously considered, is in the doubtful zone, and, for the reasons already indicated, we think that doubt should be resolved at the present time in favor of sustaining the statute,"

will be amended to read as follows:

"This question, like the one previously considered, is in the doubtful zone, and, for the reasons already indicated, we think that doubt should be resolved in favor of sustaining the statute."

[fol. 49] The concluding sentence of the opinion, which reads as follows:

"The writ will be denied, with leave to present the questions again after an appeal, from the judgment upon the merits, if there is such an appeal,"

will be amended to read as follows:

"The writ will be denied."

With the concluding sentence as thus amended, the original opinion will say, as we here now say without qualification, that the writ is denied. In all other respects, the petition for rehearing will be denied.

[fol. 50] IN SUPREME COURT OF WASHINGTON

No. 24002

STATE ex Rel. BOND & GOODWIN & TUCKER, INCORPORATED, Realtor,

v.

SUPERIOR COURT OF SPOKANE COUNTY, Respondent

JUDGMENT—Dec. 2, 1932

This cause having been heretofore submitted to the court upon the petition of the relator for a writ of prohibition to restrain the respondent from taking any further proceedings in the case of W. A. Monroe vs. Vancouver Kraft Co. and these relators and others, and the court having filed its opinion in writing, it is ordered and adjudged that the petition be and the same is denied and that the said W. A. Monroe have and recover of and from the said Bond & Goodwin & Tucker, Incorporated the costs of this action taxed and allowed at Sixteen and 00/100 Dollars and that execution issue therefor. And it is further ordered that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 51] IN SUPREME COURT OF WASHINGTON

No. 24002

[Title omitted]

ORDER RECALLING REMITTITUR, ETC.—Filed Dec. 6, 1932

Ordered that the remittitur in the above entitled cause be recalled and that proceedings in the Superior Court therein be stayed for a period of thirty (30) days in order that an appeal to the United States Supreme Court may be initiated.

December 6, 1932.

Warren W. Tolman, Chief Justice.

[File endorsement omitted.]

[fol. 52] [File endorsement omitted]

No. 24002

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed Dec. 29, 1932

PETITION FOR APPEAL

Your petitioner, the appellant above named, to-wit: Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, hereby respectfully sets forth that on the 2nd day of December, 1932, the Supreme Court of the State of Washington, sitting at Olympia, Washington, made and entered a final order and judgment in favor of the above named appellees and against your petitioner, which order and judgment denied the application of the petitioner for a writ of prohibition restraining the appellees from taking any further proceedings in a certain cause pending in the aforesaid Superior Court of the State of Washington for Spokane County entitled: W. A. Monroe, Plaintiff, v. Vancouver Kraft Company, Ltd., a corporation, and the petitioner and others, Defendants. That said Supreme Court

[fol. 53] of the State of Washington is the highest court of the said State of Washington in which a decision in said matter can be had.

Considering itself aggrieved by the said final order and judgment of the said Supreme Court of the State of Washington, the said Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, hereby prays that an appeal be allowed to the Supreme Court of the United States herein and for an order fixing the amount of the bond thereon.

Assignment of Errors

The said Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, assigns the following errors in the record and proceedings in the said case:

I

The Supreme Court of the State of Washington erred in holding that the provisions of Section 3854 of Rem. Comp. Stats. of Washington, 1922, under which service of summons and complaint upon the appellant, Bond & Goodwin & Tucker, Incorporated was attempted by leaving one copy of said summons and complaint in the office of the Secretary of State of the State of Washington, are not repugnant to and are not in conflict with and are not in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the particular provisions of said Section 3854 regarding service of process upon a foreign corporation where such corporation has withdrawn from the State do not require the Secretary of State or the plaintiff in the action to give said corporation any notice of such service of process or any copy of the summons or complaint or in any other way to give such corporation any notice or information as to the nature and [fol. 54] character of the action so as to enable such corporation to make a defense thereto and the State of Washington, by and through said Section 3854, assumes and seeks to deprive the appellant of its property without due process of law.

II

The Supreme Court of the State of Washington erred in holding that the provisions of Section 3854 of Rem.

Comp. Stats. of Washington, 1922, under which service of summons and complaint upon the appellant Bond & Goodwin & Tucker, Incorporated was attempted by leaving one copy of said summons and complaint in the office of the Secretary of State of the State of Washington, are not repugnant to and are not in conflict with and are not in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that the particular provisions of said Section 3854 regarding service of process upon a foreign corporation, where such corporation has withdrawn from the State, are less favorable than similar provisions regarding service of process contained in Section 227 of Rem. Comp. Stats. of Washington, 1922, as to service on domestic corporations where no officer or agent of such corporation can be found in the State, and are less favorable than similar provisions regarding service of process contained in Section 7044 of Rem. Comp. Stats. of Washington, 1922, as to service of process on foreign insurance companies, and the State of Washington, by and through said Section 3854, assumes and seeks to deny to the appellant the equal protection of its laws.

III

The Supreme Court of the State of Washington erred in holding that under the provisions of Section 3854 of Rem. [fol. 55] Comp. Stats. of Washington, 1922, jurisdiction over the person of the appellant, Bond & Goodwin & Tucker, Incorporated, was acquired by the Superior Court of the State of Washington for Spokane County in the case of W. A. Monroe, Plaintiff, v. Vancouver Kraft Company, Ltd., appellant and others, Defendants, pending in said court, by leaving one copy of the summons and complaint in said action with the Assistant Secretary of State of the State of Washington in that said Section 3854 does not provide for service of process upon a foreign corporation, after it has withdrawn from the State, by leaving a copy of summons and complaint with the Assistant Secretary of State of the State of Washington and does not require the Assistant Secretary of State or the plaintiff in the action to give said corporation any notice of such service or any copy of the summons or complaint or in any other way to give such corporation any notice or information as to the nature and character of the action so as to enable such cor-

poration to make a defense thereto and by and through such attempted service of process the State of Washington assumes and seeks to deprive the appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

IV

The Supreme Court of the State of Washington erred in holding that jurisdiction over the person of the appellant, Bond & Goodwin & Tucker, Incorporated, was acquired by the Superior Court of the State of Washington for Spokane County in the case of W. A. Monroe, Plaintiff, v. Vancouver Kraft Company, Ltd., appellant, and others, Defendants, pending in said court, by leaving one copy of the summons and complaint in said action with the Assistant Secretary of State of the State of Washington in that under the provisions of Section 3854, of Rem. Comp. Stats. of [fol. 56] Washington, 1922, there is no provision for service of process upon the Assistant Secretary of State and by such service of process the State of Washington assumes and seeks to deprive appellant of its property without due process of law, contrary to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

V

The Supreme Court of the State of Washington erred in holding that the Superior Court of the State of Washington for Spokane County acquired jurisdiction over the person of the appellant, Bond & Goodwin & Tucker, Incorporated, in the case of W. A. Monroe, Plaintiff, v. Vancouver Kraft Company, Ltd. and Bond & Goodwin & Tucker, Incorporated and others, Defendants, in that the attempted service of process upon the appellant, Bond & Goodwin & Tucker, Incorporated, personally, within the State of Washington after it had withdrawn from said State, by leaving a copy of the summons and complaint with the Secretary or Assistant Secretary of State of the State of Washington, in the manner provided by Section 3854 of Rem. Comp. Stats. of Washington, 1922, is repugnant to and in conflict with and in violation of Section 1 of the Fourteenth

Amendment to the Constitution of the United States and thereby the State of Washington assumes and seeks to deprive the appellant of its property without due process of law and to deny to appellant the equal protection of its laws.

VI

The Supreme Court of the State of Washington erred in denying to the appellant a permanent writ of prohibition enjoining and restraining the Superior Court of the State of Washington for Spokane County from proceeding with [fols. 57–63] the trial of the cause pending before it entitled W. A. Monroe, Plaintiff, v. Vancouver Kraft Company, Ltd., and Bond & Goodwin & Tucker, Incorporated, and others, defendants, as against the appellant and from exercising any jurisdiction therein over the appellant in that the attempted service of process upon the appellant by leaving a copy of the summons and complaint with the Secretary or Assistant Secretary of State of the State of Washington in the manner provided by Section 3854 of Rem. Comp. Stats. of Washington, 1922, under which attempted service of process said Superior Court claims to have acquired such jurisdiction, was and is repugnant to and in conflict with and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and thereby the State of Washington assumes and seeks to deprive the appellant of its property without due process of law and to deny to appellant the equal protection of its laws.

Prayer for Reversal

For which errors appellant prays that the said judgment of the Supreme Court of the State of Washington, dated December 2, 1932, in the above entitled cause, be reversed and a judgment entered in favor of the said appellant, and for costs.

Elmer E. Todd, Frank E. Holman, Counsel for Appellant.

[fol. 64] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

No. 24002

[Title omitted]

ORDER ALLOWING APPEAL—Filed Dec. 29, 1932

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Washington on the 2nd day of December, 1932, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Washington in the above entitled cause, as provided by law, and

[fol. 65] It is further ordered that the Clerk of the Supreme Court of the State of Washington shall prepare and certify a transcript of the record, proceedings and judgment in this cause, in accordance with Rule 10 of the Revised Rules of the Supreme Court of the United States, and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within sixty (60) days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of one thousand dollars ($1,000.00).

Dated this 29th day of December, 1932.

Warren W. Tolman, Chief Justice of the Supreme Court of the State of Washington.

[fols. 66 & 67] Bond on appeal for $1,000, approved and filed January 3, 1933, omitted in printing.

[fols. 68–71] Citation, in usual form, showing service on Joseph B. Lindsley, filed January 3, 1933, omitted in printing.

[fol. 72] IN SUPREME COURT OF WASHINGTON

No. 24002

[Title omitted]

ORDER DIRECTING FILING OF RETURN TO ALTERNATIVE WRIT OF PROHIBITION AS OF JULY 1, 1932

Whereas, on July 1st, 1932, in open court, at the time the above entitled cause was called for argument before the court sitting en banc, counsel for the Respondents in said cause asked and obtained leave to file Respondents' return to alternative writ of prohibition, counsel for the Relator not objecting thereto, and

Whereas, the said return to alternative writ of prohibition was at said time submitted to the court as part of the records in said cause, but through inadvertence said return to alternative writ of prohibition was not in fact filed in the clerk's office or incorporated with the records and files in said cause; now, therefore, upon consideration thereof,

It is ordered that the aforesaid return to alternative writ of prohibition be filed with the clerk of this court in the above entitled cause as of July 1st, 1932.

Dated this 9th day of January, 1933.

Walter B. Beals, Chief Justice.

[fol. 73] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

No. 24002

[Title omitted]

PRÆCIPE FOR RECORD ON APPEAL—Filed Jan. 3, 1933

To the Honorable C. S. Reinhart, Clerk of the Supreme Court of the State of Washington:

You will please make and transmit to the Supreme Court of the United States, under your hand and seal of the Supreme Court of Washington, in the manner and in the time required by the statutes of the United States, the rules of the Supreme Court of the United States and the Order allowing an appeal in the above entitled cause, a

true copy of the material parts of the record in the above entitled cause, including therein the following documents and papers, to-wit:

1. Affidavit and application for writ of prohibition (including the copies of the following documents attached thereto as exhibits):

(a) Summons in case of Monroe v. Vancouver Kraft.

(b) Sheriff's return in the case of Monroe v. Vancouver Kraft.

(c) Special appearance and motion in case of Monroe v. Vancouver Kraft, which in turn includes copies of affidavit of Donald Y. Lamont, Certificate of Dissolution, Affidavit of Benton G. Wood, Affidavit of J. Grant Hinkle; affidavit of Clark Erwin; and affidavit of Parker W. Kimball; also order denying motion to quash; also special application for stay of proceedings; including certificate to the foregoing.

[fol. 74] 2. Order to Show Cause and alternative writ of prohibition.

3. Demurrer to application for writ of prohibition.

4. Return to alternative writ of prohibition (Including Exhibit A thereto attached).

5. Opinion filed October 13, 1932.

6. Relator's petition for a rehearing.

7. Order denying petition for rehearing dated Dec. 2, 1932.

8. Opinion filed December 2, 1932.

9. Judgment entered Dec. 2, 1932.

10. Order dated December 6, 1932, recalling remittitur.

11. Petition for allowance of appeal, assignments of error and prayer for reversal.

12. Statement as to jurisdiction of the Supreme Court of the United States.

13. Order allowing appeal and fixing bond.

14. Bond.

15. Citation, with proof of service.

16. Notice directing attention to Rule 12 of United States Supreme Court and proof of service, including service of copy of petition and order allowing appeal, copy of assignments of error and copy of statement as to jurisdiction.

17. Order authorizing filing nunc pro tunc of return to alternative writ of prohibition.

18. Præcipe for record and proof of service.
Elmer E. Todd, Frank E. Holman, Counsel for Applant.

Service of the foregoing Præcipe and receipt of copy thereof acknowledged this 20th day of Dec., 1932.
Parker W. Kimball, Wakefield & Witherspoon, Counsel for Appellees. Herbert W. Erskine.

[fol. 75] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 76] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Feb. 3, 1933

Comes now the appellant and adopts its assignments of error as its statement of the points to be relied upon and represents that the whole of the record, as filed, is necessary for the consideration of the case.
Elmer E. Todd, Frank E. Holman, Counsel for Appellant.

Service of the foregoing statement and designation acknowledged this 27th day of January, 1933.
Parker W. Kimball, Wakefield & Witherspoon, Herbert W. Erskine, Counsel for Appellees.

Address: 1117 Old National Bank Bldg., Spokane, Washington.

[fol. 77] [File endorsement omitted.]

Endorsed on cover: File No. 37,360. Washington Supreme Court. Term No. 663. The State of Washington on the relation of Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, appellant, vs. Superior Court of the State of Washington for Spokane County and Honorable Joseph B. Lindsley, judge thereof. Filed February 3, 1933. File No. 37,360.